

# Order

**Michigan Supreme Court  
Lansing, Michigan**

Entered: November 30, 2001

Maura D. Corrigan,  
Chief Justice

01-06

Michael F. Cavanagh  
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Justices

Proposed Amendment of  
Rule 2.102 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.102 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposal or to suggest alternatives. Before adoption or rejection, the proposal will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, [www.supremecourt.state.mi.us](http://www.supremecourt.state.mi.us).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language in subrule (G) would be amended and subrule (H) would be added, as indicated below.]

**Rule 2.102          Summons; Expiration of Summons; Dismissal of Action  
for Failure to Serve**

(A) - (F) [Unchanged.]

(G) Exception; Summary Proceedings to Recover Possession of Realty. Subrules (D), (E), and (F) do not apply to summary proceedings governed by MCL 600.5701-600.5759; ~~MSA 27A 5701-27A.5759~~ and by subchapter 4.200 of these rules.

(H) Incarcerated Parties. (NEW)

(1) This subrule applies to

(a) domestic relations actions involving minor children, and

- (b) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights,

in which a party is believed to be incarcerated under the jurisdiction of the Department of Corrections.

- (2) The party seeking an order regarding the minor child shall

- (a) contact the department to confirm the incarceration and to obtain the incarcerated party's prison number and location; and

- (b) file a motion for an order requesting the department, or the facility where the party is located if it is not a department facility, to allow the incarcerated party to participate with the court or its designee by way of a non-collect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The motion must be accompanied by proof that the papers regarding the minor child were served on the incarcerated party.

- (3) The purpose of the telephone call described in this subrule is to ascertain

- (a) whether the incarcerated party received adequate notice of the proceedings and has had an opportunity to respond and to participate,

- (b) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the party's access to the court is protected,

- (c) whether the party is capable of self-representation, if that is the party's choice,

- (d) how the party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls.

- (4) A court shall not grant the relief requested by the moving party concerning the minor child if that party has not complied with this subrule or, if the moving party has complied, the court has not issued an order to the department or other facility requesting that the

incarcerated party be allowed to participate in the telephone call described in this subrule. This provision shall not apply if the incarcerated party actually does participate in the telephone call.

- (5) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Staff Comment: The proposed addition of subrule (H) is based on a proposal made in conjunction with the settlement agreement in the Court of Claims of that portion of *Cain v Dep't of Corrections*, 88-61119-AZ, 93-15000-CM, and 96-16341-CM, that pertains to women prisoners. The deletion of the MSA citation in subrule (G) is consistent with Supreme Court Administrative Order 2001-5, which amended the Michigan Uniform System of Citation.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2002. P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@jud.state.mi.us. When filing a comment, please refer to file 01-06.